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Superintendent

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To The United States House of Representatives Committee on Education and Labor:

I am deeply disappointed in the draft reauthorization of the Elementary and Secondary Education Act (ESEA) released last week. Mixed enthusiasm greeted the 2001 reauthorization of the ESEA, termed No Child Left Behind (NCLB), primarily because it failed in four major ways.

First, improving educational systems relies on providing stronger supports for schools while simultaneously increasing accountability. NCLB failed by sharply increasing accountabilities while providing only marginal supports for schools or school systems. Students with disabilities and limited English proficient students were to be included in accountability determinations, but neither Congress nor the United States Department of Education (USED) provided clear guidance on how to craft a credible accountability system for our students with special needs. Marginal support was evident both in the text of the law, and in the weak and insufficient appropriations that have followed ever since. Funding was dismally low in the authorization; the appropriations have been criminally low.

Second, because NCLB accountabilities were crafted without a broad array of schools in mind, the law was bound to misidentify schools – labeling schools performing well as ailing. The likelihood for misidentification dramatically rises in states with large numbers of schools with small student populations. This is a direct result of a one-size-fits-all approach to education policy.

Third, the NCLB definition of success was rhetorically powerful, but practically impossible for schools to attain. In the training of teachers, the Montana Office of Public Instruction (OPI) emphasizes the importance of high expectations. OPI is clear, however, that high expectations should not be unreasonable expectations. The 100 percent proficiency mandate of NCLB accompanied by sanctions provides a stunningly clear example of an unreasonable expectation.

Fourth, NCLB overextended the reach of the federal government into affairs more appropriately managed by states and communities. The law micro-managed the use of funds and failed to recognize relevant community differences in its lengthy prescriptions for struggling schools. NCLB's failure to appreciate the strong influence of concentrated poverty on student achievement, for instance, has labeled many healthy schools – often one of the more vital institutions in a struggling community – as failing.

These concerns are not exhaustive. The law fails to serve schools in an array of ways, but I have limited time and space to express my concerns, so I wish to highlight these targets, specifically.

The draft Title I language released last week fails to improve upon any of these four fatal flaws in NCLB. In fact, they are made worse. The accountability provisions, as contemplated, are more onerous, not less. The likelihood for mischaracterization would increase, thanks to reductions or eliminations in statistical safeguards like the minimum N-size and the application of confidence intervals conferring higher levels of statistical certainty. Looming on the horizon, the 100 percent proficiency mandate remains, promising the ultimate failure of all of our nation's public schools. And the transfer of power from local education agencies to Congressional committee rooms and the United States Department of Education (USED) is hastened. The suggested language for ESEA reauthorization released by the House Committee on Education and Labor must be significantly modified. Failing that, it must be rejected.

Increased Accountability, Too Few Supports

For "High Priority Redesign Schools," the draft released by the committee demands the closure of the school, or the "reconstitut[ion]" of the school's leadership and staff.

In Montana, OPI has put together meaningful school support teams – with scant federal resources to help – to assist our schools in need. It's working, though progress is coming more slowly than the law arbitrarily demands.

All of the schools in Montana that would fall into the category of "High Priority Redesign Schools" are on American Indian reservations. The schools are located in geographically remote areas of our state. Shutting down these schools is not an option. Students already in danger of dropping out would have nowhere else to go. Reconstituion is not a good idea, either, because progress is being made by investing in the staff and the development of their leadership. Our high-priority schools already suffer from low educator retention rates. Why does Congress want to be the catalyst for increasing the rate at which competent professionals leave the school?

Moreover, Montana's Constitution does not allow the state education agency (SEA) to take over, shut down, or reconstitute a school. It is an instance of a direct conflict between federal policy and state constitutional mandates.

OPI support programs are run on a shoestring and a lot of dedication from our staff. But SEAs in many states, including Montana, are finding it more and more difficult to provide technical assistance to schools failing to meet legal demands of adequate yearly progress (AYP). In the coming years, as the objectives for schools increase, ever more schools will be identified for assistance. In forums with national leaders, we have repeatedly called for additional resources to assist our schools. Instead, what we received was an increase in the Title I, part A set-aside for state-wide efforts from 4 percent to 5 percent. That's not enough. OPI will simply not be able to meaningfully assist the projected number of schools failing to meet AYP.

Potential for Misidentification

With small numbers of students, there is a greater statistical likelihood that poor exam performance is a result of chance, and not ineffective school practice. As an extreme, I can imagine a school with a single student being tested. If the student were extraordinarily challenged – by a death in the family, crushing poverty, a severe learning disability, or a profound emotional disturbance – even a terrific teacher may not be able to improve math and reading proficiency at the same level demanded by the law. Clearly, if the population doubles,

the odds of both students experiencing extraordinary challenge decreases. Thus, when a population of students becomes sufficiently large, it is more certain that statistical measures of exam performance are better related to school effects.

Nevertheless, our best statisticians have explained that with populations smaller than 40, we cannot have statistical confidence that depressed exam performance is at all related to school practices. These statisticians have advised us that in order to avoid potential misidentification, subgroups smaller than 40 should be exempted from school-level accountability. Students will still be counted in overall district numbers, and in overall state numbers.

In small states with a number of small schools, this protection is critical. If our subgroup accountability numbers were decreased to 30, we would see many more of our excellent small schools identified as AYP failures.

Unreachable Goal

A goal of 100 percent proficiency is laudable. And most every educator in this country will be unsatisfied until it is realized. To place such a goal in law, however, with no hope of obtaining it by 2014, only serves to set our public schools up for failure. Even Senator Kennedy has publicly acknowledged that the expectation is unreasonable.

Nowhere else in public life do we demand 100 percent proficiency. We do not demand that police officers eliminate all crime. We do not demand that our firefighters eliminate all fire-related deaths or injuries. We do not ask our physicians to guarantee that no one dies of preventable disease. In all of those areas, 100 percent proficiency is certainly a goal, but we all recognize how absurd it would be to legally demand that the goals be reached on an arbitrary time scale.

And proficiency doesn't mean average performance. Proficiency is more equivalent to work that would earn A's or B's.

Because school measures of academic proficiency will become increasingly sensitive as 2014 draws near, almost all schools will be forced to label themselves as failing to meet AYP and provide other options for parents – options that do not even exist in Montana. As this takes place, trust in public schools will be artificially eroded.

Such a scenario would likely lead to increased passion for privatization of our treasured public school system, our most robust, and first, social safety net. We encourage Congress to avert this potential tragedy by crafting more reasonable goals and timelines for schools to attain.

Extension of Federal Role in Education

Montanans believe in a limited federal role in education. As an example, residents may indeed have an interest in how the students of other states learn. Education is too important to accept uneven achievement among subgroups of students. This law, however, simply goes too far. It impedes the ability of Montanans to complete their constitutional responsibility to provide and oversee a quality education system for our students.

States were, however, thrown a bone. The draft reauthorization of ESEA contemplates a "pilot project" of 15 states, sustained by grants, to develop local assessments. The law *experiments* with the idea of decentralization. That, frankly, is insulting.

Take graduation rates, for example. Our state is in the process of reexamining its policies and definitions, attempting to come to much better measures of where our students are, and

where they are going, when the draft was released by the committee. If the draft were to become law, the work of our experts engaged in that reexamination would be moot. The assumption appears to be that state and local officials can all go home. Congress is on the job. The only problem is that the Congressional product is not as good as ours. It is not as good because Congress does not know our context well enough to craft a law tailored to our unique needs, including the needs of our students. We do.

Nationwide, federal resources (which are in fact Montana tax dollars) make up about 10 percent of overall education spending. Montana takes the view that the federal government should then decide what 10 percent of education policy they would like to focus on. Instead, this law attempts to manage the 90 percent of education policy it never helps to support.

How these Four Flaws Conspire

While other commentary clearly chastises the overly punitive design of NCLB, its potential for mislabeling school performance, the patently unfair demand for 100 percent proficiency, and the inappropriate extension of centralized power, we want to examine just one way in which a small, largely rural state like Montana is endangered by the law.

We've become accustomed to seeing the four fatal flaws of NCLB conspire, but this draft for ESEA reauthorization is even more fraught with peril. The new requirements for English Language Learner (ELL) assessment, for example, demonstrate an even more potentially damning conflation of the four flaws found in NCLB.

If the draft proposal were to become law, language families comprising more than 10 percent of a state's ELL population would require their own native language assessment. In Montana, two language families meet the criteria: Blackfeet and Crow.

Students who speak Blackfeet or Crow in the home are not likely to have ever been exposed to written elements of those languages, and so a written native language assessment would make little sense. And because the number of fluent Blackfeet or Crow speakers is so small, an oral native language assessment becomes impossible to implement, too – we could simply not find enough proctors to administer such an exam across our state. Clearly, states are being handed an accountability requirement without matching support.

Even if we were able to develop native language assessments, the creation of the instrument would likely extend more than two years. According to the draft, a timeline extending more than two years is unacceptable, allowing the Secretary of Education to withhold up to 25 percent of Montana's rightful share of resources. The law fails to recognize unique challenges in states.

Most importantly, assessments in Blackfeet and Crow would be unlikely to help our students who speak them. Students who speak Blackfeet or Crow generally do not have literacy skills in either language that *exceed* their English literacy skills. Their English may be impacted, but it is still their strongest language asset. Assessment in a less developed language makes little sense.

Placing such a provision in law would surely increase the number of ELL students failing to meet proficiency standards, thereby increasing the likelihood that an otherwise healthy school system would be identified as failing. This potential for mischief only grows when one considers the fact that American Indian students, more than any other racial subgroup in the United States, are likely to attend schools in rural areas. The number of test-takers in a rural school is small, as are the resulting subgroups in the school. Rural school results are therefore much more subject

to natural statistical variation, rather than differences in performance based on relevant school factors.

The ELL proposal may work well for a large school with a significant, fluent Spanish-speaking population. But it would be disastrous for Montana. Were the law to respect the decision-making of state language experts and state education officials, such a ridiculous idea would never even reach the light of day.

Technical problems abound with the draft, some that are just becoming apparent. In section 1003, for instance, the formulas for state allotments of local school improvement monies have been retooled to be based upon the number of high-priority schools in the state. This creates a perverse incentive for failure, and punishes states that were not demonstrating large numbers of failing schools. Surely, there are many more technical problems with the draft, urging us all to ensure that any reauthorization is deliberately considered, even if that means waiting on reauthorization until after the 2008 election.

There are several other ways in which the proposed changes to the ESEA fail to meet the needs of states, schools, and the students they serve. This memo serves to only highlight problems in the draft proposal. Time constraints prohibit me from expressing more detail. Over the course of coming weeks, OPI will submit additional policy memos and white papers meant to inform the understanding of our Congressional partners – memos on topics like teacher quality, the appropriate inclusion of students with disabilities in accountability provisions, resources, and necessary revisions to other areas of public policy to help improve results in schools. It is my hope that through honest, open dialogue, we can arrive at a meaningful piece of legislation, well-designed to build on our nation's tradition of educational excellence, and extend the promise of strong educational outcomes to all of our nation's schoolchildren.

Sincerely,

Linda McCulloch
State Superintendent

CC: Senator Max Baucus
Senator Jon Tester
Congressman Denny Rehberg
Governor Brian Schweitzer